

Glenda Wiles

From: Brian Bachman [brbach@mac.com]
Sent: Sunday, September 07, 2008 9:51 AM
To: Glenda Wiles
Subject: Setback Draft 2

The following is an excerpt from a letter I have sent the Planning Department. Because of the turnover, and the urgency of this concern, I am forwarding this to all of the commissioners as well.

"I have reviewed the new draft of the Streamside protection regulation. I offer following comments for your consideration.

My greatest concern is the creation of a new definition of an ordinary high water mark. The State of Montana Streamside Access Law provides a definition that is broadly used and understood. The SSC Draft 2 contains a totally new definition that will lead to confusion in streamside access. It is conceptually a much larger area than the state definition, depending on which of the three definitions contained within the SSC Draft 2 are used.

I would strongly encourage the county commissioners to direct the SSC to revert to the use of the State definition.

I have copied below the two definitions.

DRAFT STREAMSIDE PROTECTION REGULATION

Revised 8/22/2008 SSC Review Draft 2

Ordinary High Water Mark:

An elevation that typically marks the water level in a stream which has a recurrence level of approximately 2.5 years. It is the highest level at which the water has remained long enough to leave a prominent mark on the landscape. Typically, it is the point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

9/8/2008

Montana Stream Access Law

The legislature defines the ordinary high water mark as:

"Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks."

Thank you for your consideration.

Sincerely,

Brian Bachman

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